

REMARKS

Claims 1-20 were examined in the most recent office action dated March 24, 2005. Claims 1-20 stand finally rejected over various cited references. By way of this response, applicants request reconsideration of the rejections to independent claims 1 and 16 as amended, and to independent claim 12 as originally filed.

Claims 1 and 16 have been amended to merely incorporate the subject matter of previously examined dependent claims. No subject matter requiring new consideration has been entered. As such, these amendments merely place the claims into a better form for consideration on appeal. See 37 C.F.R. § 1.116(b)(2). Accordingly, entrance of these amendments is proper.

Because the office action did not meet its burden to show that the subject matter of these claims are anticipated, withdrawal of the rejections and a notice of allowance is respectfully solicited.

Amended Claim 1 is Allowable.

Claim 1 has been amended to include the subject matter of originally filed dependent claims 5 and 6. Applicant traverses the rejection to claim 1 as amended, because there was no showing that the subject matter of originally filed claims 5 or 6 is anticipated. Claims 1, 5 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fayerman, et al., U.S. Patent No. 6,394,795 ("Fayerman"), and as anticipated by Creuz, U.S. Patent No. 3,881,863 ("Creuz").

Claim 1 recites, in part, the protective chamber is downstream relative to, and separated and spaced away from, the burner; that the protective chamber includes a face plate and side panels that are disposed perpendicular to the face place; and that the face place is perpendicular to a longitudinal axis of the duct. As amended, the protective chamber includes structure that is distinct from the burner, i.e., the structure of the protective chamber is distinct from the manifold and the baffles extending from the manifold. Neither Fayerman nor Creuz discloses a protective chamber with the recited structure.

Fayerman discloses a burner with a manifold 12 and a pair of baffles 21, 22 extending away from the manifold 12. The baffles 21, 22 each include a wing 25, 26, each of which define an air chamber directly adjacent the portion of the baffles 21, 22 closest to the manifold 12. Air is preheated as it travels through these chambers, which is said to positively

affect performance of the burner. The baffles are placed downstream of the manifold in a duct.

There is no disclosure whatsoever of a protective chamber with a face plate that is separated and spaced away from the manifold and baffles, i.e., the burner. There is further no disclosure of a face plate perpendicular to the longitudinal axis of a duct. There is no disclosure of a protective chamber including sidewalls that are perpendicular to the face plate. There is no teaching whatsoever of a protective chamber with the recited structure that is downstream relative to the burner. Accordingly, claim 1 is not anticipated by Fayerman.

Creuz discloses a fuel burner 10 that can burn both gas and oil. The burner 10 includes a perforated cone 15 and an annular manifold 17a that surrounds the tip of the cone 15. The burner 10 is disposed in a duct 11 with the manifold 17a upstream and the cone 15 downstream. A baffle ring 31 extends out from the downstream end of the cone 15.

Creuz fails to disclose a protective chamber with a face plate that is separated and spaced away from the burner. There is further no disclosure of a face plate perpendicular to the longitudinal axis of a duct. There is no teaching of a protective chamber having sidewalls that are perpendicular to the face plate. There is no teaching whatsoever of a protective chamber with the recited structure that is downstream relative to a burner. Accordingly, claim 1 is not anticipated by Creuz.

Because neither of the references discloses nor even suggests these elements, claim 1 is allowable over the art of record. Further, claims 2-4 and 7-11, which depend from claim 1, are also allowable.

Claim 12 is Allowable.

Applicants traverse the rejection to claim 12 as being anticipated by each of Fayerman and Creuz. Claim 12 recites, in part, an interior wall spanning across an interior of the air duct, the interior wall having at least three openings, a first opening in an interior of the wall, the second and third openings flanking the wall. Claim 12 further recites, in part, first and second side walls extending from the interior wall away from the burner. Although claim 12 was rejected over the same references, there was no mention whatsoever in the office action how these references teach the elements of claim 12.

Fayerman only discloses the burner itself. Fayerman does not disclose in any way the construction of a duct or the relation of the burner to the duct. Accordingly, it does not

disclose an interior wall spanning across an interior of the air duct, much less that the wall has three openings.

The first example of Creuz only notes that the air duct 11 has a “conventional profile plate 13 which is attached to, and extends peripherally about the interior of the air duct 11 and provides a 42 inch square opening.” Column 3, lines 56-59. The second example of Creuz only discloses a duct with a single opening in which the burner sits. There is no disclosure of a plate with three openings. There is further no disclosure of first and second side walls extending from the interior wall away from the burner.

There is also no suggestion within either of the references for the recited structure. Accordingly, claim 12 is allowable over the art of record. Dependent claims 13-15 are also allowable.

Amended Claim 16 is Allowable.

Claim 16 has been amended to include the subject matter of originally filed claim 18. Applicant traverses the rejections to claim 16 as amended, because there was no showing that the subject matter of originally filed claim 18 is anticipated. Claims 16 and 18 stand rejected as being anticipated by Fayerman and as anticipated by Creuz. Claim 16, as amended, recites, in part, an air duct; a protective chamber including a profile opening; the protective chamber being separate and spaced away from the combustion chamber; and the protective chamber being formed by a face plate, first and second sides depending from the face plate, and a top and bottom of the duct.

Again, Fayerman does not disclose a duct at all, and therefore does not disclose any type of a structural relationship between a protective chamber and a duct. Creuz fails to disclose a protective chamber being formed by a face plate, first and second sides depending from the face plate, and a top and bottom of the duct. Creuz further fails to disclose a protective chamber with the recited structure being separate and spaced away from the combustion chamber. Neither reference provides any suggestion for such a structure. According, claim 16 is allowable. Further, claims 17, 19, and 20, depending from claim 16, are also allowable.

The Next Office Action, if Not Based on Previously Applied References, Cannot Be Made Final.

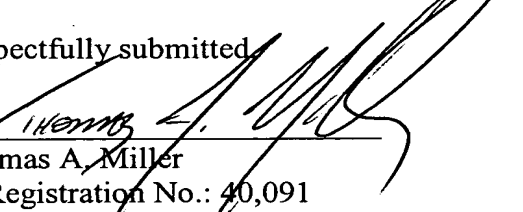
If the next office action rejects any claim based on a reference other than Fayerman and Creuz, the office action cannot be made final. Because the examiner previously rejected the subject matter of presently pending claims 1, 12, and 16 (as claims 6, 12, and 18, respectively) under the Fayerman and Creuz, any rejection to these claims based on a new reference would not be a rejection necessitated by applicant's amendment. Instead, it would be a new rejection to subject matter already examined. See MPEP § 706.07. Accordingly, any future rejection based on new references could not be made final.

CONCLUSION

In view of the above amendment, the pending application is in condition for allowance. This response has been filed within three months of the mailing of the final office action. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 13-2855, under Order No. 29764/39373 from which the undersigned is authorized to draw.

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Respectfully submitted,

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